

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

**CERTAIN UNDERWRITERS AT LLOYDS  
OF LONDON as subrogee of Duke Energy  
Renewable Services,**

**PLAINTIFF,**

**vs.**

**VESTAS-AMERICAN WIND  
TECHNOLOGY, INC. AND SGB USA,  
INC.,**

**DEFENDANTS.**

**CIVIL ACTION NO. 7:17-CV-173**

**DEFENDANT VESTAS-AMERICAN WIND TECHNOLOGY, INC.'S  
NOTICE OF REMOVAL**

Vestas-American Wind Technology, Inc. (“Vestas”), Defendant in the in the above-styled and numbered cause of action, files this Notice of Removal of this action from the District Court of Starr County, Texas to the United States District Court for the Southern District of Texas, McAllen Division. In support of this Notice of Removal, Vestas states that pursuant to 28 U.S.C. §1441 *et. seq.*, diversity of citizenship exists between Plaintiff and all Defendants, and also respectfully shows the Court as follows:

**INTRODUCTION**

1. On or about March 28, 2017, Plaintiff CERTAIN UNDERWRITERS AT LLOYDS OF LONDON as subrogee of Duke Energy Renewable Services (“Plaintiff”) filed a civil action in the 381<sup>st</sup> Judicial District Court of Starr County, Texas, bearing Cause Number DC-17-145, against Defendants VESTAS-AMERICAN WIND TECHNOLOGY, INC.,

WANZEK CONSTRUCTION<sup>1</sup> and SGB USA, INC, seeking to recover amounts it paid to its insured, Duke Energy Renewable Services, pursuant to a policy of insurance. *See* Plaintiff's Original Petition and Requests for Disclosures attached hereto as Exhibit C-1.

2. On or about April 7, 2017, Plaintiff served Vestas through service on its registered agent, C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas.

3. Pursuant to 28 U.S.C. §1446(b), this Notice of Removal is timely filed within thirty days of Defendant's receipt of a copy of the initial pleading setting forth the claim for relief upon which this action is based.

### **BASIS FOR REMOVAL**

4. Removal is proper because there is complete diversity of citizenship between the parties, no defendant is a citizen of the state in which the action was brought, and the amount in controversy far exceeds the sum of \$75,000, exclusive of interest and cost. 28 U.S.C. §1332(a); 28 U.S.C. §1441(b)(2).

5. Upon information and belief, Plaintiffs Certain Underwriters at Lloyd's of London are foreign citizens and are not citizens of Delaware, Ohio, Oregon, or California.

6. Defendant Vestas-American Wind Technology, Inc. is and was at all relevant times a foreign corporation organized and existing under the laws of the State of California, whose principle place of business is 1417 NW Everett Street, Portland, OR 97209.

7. On information and belief, Defendant, SGB USA, Inc. is and was at all relevant times a foreign corporation organized and existing under the laws of the State of Delaware with a principal place of business located at 1776 Constitution Avenue, Louisville, OH 44641.

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<sup>1</sup> On May 3, 2017, Plaintiff filed a motion to dismiss the claims against Defendant Wanzek, and the state court issued an order dismissing Defendant Wanzek on May 4, 2017. The Order of Dismissal is attached as Ex. E. Also on May 4, 2017, Plaintiff filed an Amended Original Petition that removed Defendant Wanzek. *See* Ex. C-5.

8. Diversity jurisdiction existed at the time of filing of Plaintiff's Original Petition<sup>2</sup> and Amended Original Petition, and at the time of filing of this Notice of Removal.

9. The amount in controversy is in excess of \$75,000.00. Specifically, Plaintiff alleges it "seeks damages in an amount greater than \$1,000,000.00," and "[t]his action seeks recovery of amounts paid by Plaintiff to its insured in the amount of \$3,003,354.00 for the damaged wind turbine." *See* Ex. C-1, Petition at ¶ 12-13.<sup>3</sup> Plaintiff also seeks attorneys' fees in addition to this amount. *See id.* at p.11. Accordingly, the monetary relief sought by Plaintiff in this action exceeds the minimum jurisdictional limit necessary to confer original jurisdiction over the action under 28 U.S.C. §1332.

10. Vestas is filing written notice of this removal with the clerk of the state court in which the action is currently pending. *See* 28 USC §1446(d). Copies of the Notice of Filing Notice of Removal are being served upon all parties to this action.

11. The United States District Court for the Southern District of Texas, McAllen Division, embraces the county in which the state court action is now pending. Thus, this Court is a proper venue for this action pursuant to 28 U.S.C. §§124(b)(7) and 1441(a).

12. All named and served Defendants consent to the removal of the Lawsuit.

13. In accordance with Local Rule 81, Vestas is filing this Notice of Removal, accompanied by indexed copies of the following:

- (1) An index of matters being filed (Exhibit A);
- (2) All executed processes in this case (Exhibit B);

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<sup>2</sup> On information and belief, former Defendant Wanzek Construction, Inc. is and was at all relevant times a foreign corporation organized and existing under the laws of the State of North Dakota, whose principle place of business is 60 Douglas Road, 12th Floor, Coral Gables, Florida 33134. On information and belief, Plaintiff is not a citizen of either North Dakota or Florida.

<sup>3</sup> Plaintiff repeats these allegations in its recently filed Amended Original Petition, and adds that it seeks \$100,000 for its insured's deductible. *See* Ex. C-5, at ¶¶ 8-9.

- (3) Pleadings asserting causes of action, e.g., petitions, counterclaims, cross actions, third-party actions, interventions and all answers to such pleadings (Exhibit C);
  - (4) The docket sheet (Exhibit D);
  - (5) All orders signed by the state judge (Exhibit E);
  - (6) A list of all counsel of record, including addresses, telephone numbers, and parties represented (Exhibit E).
14. Plaintiff has requested a jury in the state court action.

**PRAYER**

PREMISES CONSIDERED, Defendant respectfully removes this matter from the 381<sup>st</sup> Judicial District Court of Starr County, Texas to the United State District Court for the Southern District of Texas—McAllen Division for trial and determination of all issues.

Respectfully submitted,

**STRASBURGER & PRICE, LLP**

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**ATTORNEYS FOR DEFENDANT  
VESTAS-AMERICAN WIND  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this the 5<sup>th</sup> day of May, 2017, I served the foregoing on the following counsel of record via electronic service and first class mail:

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/s/ Derek Quick  
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